would nevertheless be sufficient if it was conclusively believed. But because the learned District Judge failed to appreciate the importance of it, his grounds of judgment afford no indication that he gave to Kassim's evidence the careful consideration which its importance demanded, or that he reached any real conclusion upon it. His only reference to Kassim's evidence is in the following passage :—

> It is also corroborated as regards this matter by P.W. 10 (Kassim). Both P.W. 9 (the wife) and P.W. 10 identified the 2nd accused as the man who went to P.W. 7's house on 14/1/47. There are discrepancies in their evidence, but as the events took place six months previously I did not attach great importance to them, neither did I attach great importance to their evidence, but kept an open mind about it.

I am therefore left in this position :—

(1) Corroboration of the accomplice's evidence was required;

(2) The corroboration then became the determining factor in the case;

(3) Certain corroboration was afforded by the evidence of Kassim;

(4) The learned District Judge misdirected himself in relying upon other matters as affording corroboration;

(5) I am invited to say, from the passage in the judgment which I have quoted above, that the learned District Judge found Kassim's evidence to be conclusive.

The passage is quite insufficient to enable me to do so. It is clear that having misdirected himself in relying upon matters which did not afford corroboration, he did not adequately consider the only evidence which did.

The appeal must be allowed. The conviction and sentence are quashed, and the appellant must be discharged.

Appeal Allowed.
Conviction and Sentence Quashed.

TAN CHENG HONG v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) Jan. 23, 1948]
[Singapore — Magistrate's Appeal No. 126 of 1947]

Criminal Procedure — Statement to Police officer — Confession.

In this case the accused was charged with extortion. A letter of the usual type had been sent and after a report to the Police by the recipient, a detective was sent to the rendezvous. The detective gave evidence and said that the accused, a stranger, turned up and a conversation took place in the course of which the detective showed the accused the letter in question and asked "Is this yours?" "Was this letter sent by your people?". The Detective further said that the accused answered "Yes".

Held, that in this case the statement amounted to a confession and that evidence should have been excluded.

MAGISTRATE'S APPEAL.

A. P. Rajah for the Appellant.

Lim Koon Teck (D. P. P.) for the Respondent.

Murray-Aynsley, C. J. : — In this case there was a charge of extortion.

A letter of the usual type was sent, and the recipient wisely reported to the police. A detective was sent to the rendezvous and the appellant, a stranger, arrived. There was a conversation in the course of which the detective showed the appellant the letter in question and asked "Is this yours?" "Was this this letter sent by your people?" The appellant answered 'yes".

Now it appears to me necessary to distinguish between what is a statement about extrinsic matters and what is part of the offence. That is to say, words which constitute an offence by themselves must be distinguished from words which raise the inference that the accused has committed other acts. In cases of this sort where the detective has conversation with a suspect it is sometimes difficult to make the distinction. But I think that the question was on the wrong side of the line. If, on the other hand, the appellant had uttered a threat to the detective it would have been an offence by itself and not a confession of an offence.

The appeal must be allowed.

Appeal Allowed.

PALANIAPPA CHITTY v. RAVENA MANA MAIYAMMAI ACHI (M.W.).

[C. A. (Murray-Aynsley, C.J., Singapore, Pretheroe, Ag. C.J., F. of M.; Brown, J.) March 1, 1948]
[Singapore — Civil Appeal No. 1 of 1948]

Rules of the Supreme Court, 1934, O. 47 r. 4 — Question of paying money into Court by trustees, executors or administrators.

In this case an interlocutory order was made upon an application under Order 47 rule 4 ordering the Defendant to deposit in Court to the credit of the action the sum of $40,212/- being two-thirds of the amount of $60,318/- which came into the hands of the administrator. The defendant appealed.

Held, (Murray-Aynsley, C.J., Singapore, dissenting), that money will not be ordered to be paid into Court by trustees, executors or administrators unless there are admissions that the money is actually in their hands and that it is not sufficient that the money has been in their hands.

Cases referred to :—

(1) *Polini v. Grey* 12 Ch. D. 438.

(2) *Neville v. Matthewman* (1894) 3 Ch. 345.

(3) *Nutter v. Holland* (1894) 3 Ch. at p. 408.

(4) *Wilder v. Wilder and Charter* 56 Sol. Jour. 571.

(5) *Freeman v. Cox* (1894) 3 Ch. 148.

COURT OF APPEAL.

D. K. Walters for the Appellant.

A. de Mello (*K. P. K. Menon* with him) for the Respondent.

Murray-Aynsley, C. J. : — This is an interlocutory appeal from an order made by Jobling, J., under Order 47 rule 4 for the payment into Court of $40,212.17 being two-thirds of what the defendant received as proceeds of sale and as compensation in respect of land forming part of the estate of RM.. M. S. Subramanian Chitty.

The facts of the case are as follows. The defendant as attorney of the mother of the plaintiff obtained limited grant of administration of the estate of the deceased who was father of the plaintiff. The deceased died in May, 1924. Administration was granted in September, 1924. The plaintiff was the only child of the deceased and was born in or about 1912. Among other things the deceased left a considerable amount of landed property in the Colony. The parties are Nattukottai Chettiars domiciled in India. During the course of the administration some of the land was acquired by the Government and compensation paid. Other portions of the landed estate were sold with the leave of the Court. The total amount received by the defendant in this way was $60,318.25. Both the sureties are dead and others have not been appointed.

The plaintiff now seeks to recover her share of the estate and for that purpose has taken the present proceedings.

The defence of the defendant to the claim of the plaintiff is that the plaintiff received her share of the estate at the time of her marriage in 1927. She was then about 15 years of age, but it is alleged that she ratified the transaction in 1941 by witnessing an agreement between the defendant and her mother, which purported to be a final settlement of the affairs of the deceased. The plaintiff denies both of the allegations.

It is admitted that the destination of the landed property and the proceeds of sale and compensation would depend on the law of the Colony and would follow the Statutes of Distribution.

After the pleadings were closed the plaintiff made the application with which we are now concerned.

The application is made under Order 47 rule 4 which corresponds to the English Order 50 rule 3. A considerable amount of time was devoted to the consideration of cases of other orders notably Order 31 r. 6 (corresponding to the English Order 32 r. 6) and Order 52 r. 1 (corresponding to the English Order 55 r. 3 (d)), but in my opinion the consideration of such cases is not helpful. The object of the other orders is different and different considerations apply The object of proceedings under Order 47 is the preservation of the property which is the subject matter of the proceedings. To come within the scope of the order there must be property in the hands of the defendant and that property must be in jeopardy. On the latter point there was not much argument but in view of the fact that there are no sureties and that the defendant has an Indian domicile I do not think that it can be doubted that jeopardy exists.

There remain the questions whether a sum of money is within the order and whether money is in the possession of the defendant.

On the first point I think that the case of *Polini v. Grey*[1], shows that money is within the order.

The remaining question seems to be whether there is money in the hands of the defendant. In his affidavit in reply the defendant admits that he has received these sums of money over $60,000. He does not allege that he has paid them over to any other person but he sets up the agreement with the plaintiff's mother previously referred to. The agreement was exhibited in the affidavit of the defendant and it shows that the mother of the plaintiff purported to sell the beneficial interest in the estate of the deceased to the defendant. The effect of this is that the defendant claims to hold the sums as on his own behalf and not as administrator. Now it is of course true that under the rule in question orders of this kind can only be made where the property affected is still in the possession of the party. But the reason for this is that it might be out of the power of the party to comply with the order. It is not alleged that it is not in the power of the defendant to comply with the order.

I would distinguish the case of *Nutter v. Holland*[3]. In that case the defendant, who admittedly had at one time had funds on his hands, filed an affidavit in which he claimed that he had invested or

otherwise properly disposed of the sum. In *Neville v. Matthewman*[2], on the other hand, the affidavits showed that the defendant never had at any time in his hands the funds which he had been ordered to pay into Court. Here the defendant has received the money he does as administrator. He does not claim that he has disposed of it by way of administration. He, on the contrary, sets up an agreement made in his individual capacity with the mother of the plaintiff. As I have said, the only way in which it is suggested that this affects the plaintiff is because she witnessed the signatures. It is not suggested that she ever received independent advice or was informed of her rights.

It does not seem to me that the claim of the defendant to hold in his own right and not on behalf of the estate is a reason for not making the order. In my opinion this appeal should be dismissed with costs.

Pretheroe, Ag. C. J. : —I have read the judgment of Brown J. in this appeal and I am in agreement with the reasons he has set out and with the decision he has reached. I should not have deemed it necessary to add anything to that judgment but for the fact that the learned President has arrived at a contrary decision.

This application was brought under Order XLVII rule 4 which provides that the Court or a Judge may make an order "for the detention, preservation or inspection of any property or thing being the subject of such cause or matter". *Polini v. Grey*[1], is authority for the proposition that money in a fund comes within this rule, and *Freeman v. Cox*[5], for the proposition that the proceeds of the sale of part of a testator's estate likewise comes within that rule provided however there is an admission by the defendant that the money is in his hands. *Neville v. Matthewman*[2], decided that the rule in *Freeman v. Cox* should not be further extended. All the learned Judges in that case were of opinion that :—

> "orders of this kind made upon interlocutory motions may be the instruments of great oppression and indeed may produce great injustice".

As I understand it therefore, before the order could be made in the present motion, the learned Judge had to be satisfied that the defendant had the sum of $40,212, which he admittedly derived from the estate he administered, in his hands at the time the order was made. I have been unable to trace, and counsel for the plaintiff was unable to indicate, any such admission by the defendant.

I agree that the circumstances of this case are such that the Court, at the appropriate time, will doubtless examine the whole transaction with great care, but that is not, in my opinion, any reason for a departure from well established precedent.

In my opinion this appeal should be allowed and appellant granted his costs in this Court and in the Court below.

Brown, J. : —This is an appeal from an interlocutory order of Jobling, J. made upon an application under Order 47 rule 4, ordering the defendant to deposit in Court to the credit of the action the sum of $40,212 being two-thirds of the amount of $60,318/-, which came into his hands as administrator. The material part of the Rule under which the order was made reads as follows :—

> "The Court or a Judge.....may make any order for the detention, preservation, or inspection of any property or thing being the subject of such cause or matter....."

Polini v. Grey[1] shews that money comes within the Rule; but the two material distinctions between that case and the present case are, firstly, that in *Polini v. Grey*[1] the money consisted of an existing fund, and secondly, in that case the order was made after the action had been tried and the decision upheld on appeal, at a time when a further appeal was pending to the Court of ultimate resort. In the present case, it is admitted that the defendant has had the money, but there is no evidence that he has it now. And in this case the action has not advanced beyond the stage of pleadings, which raise issues of fact to be tried.

In my opinion we ought to be bound by the decisions in *Neville v. Matthewman*[2] and *Nutter v. Holland*[3]. Those decisions are to the effect that money will not be ordered to be paid into Court by trustees, executors or administrators unless there are admissions that the money is actually in their hands, and that it is not sufficient that the money *has* been in their hands. In the former case the report does not shew under what rule the application was made. In *Nutter v. Holland*[3] the application was made under a rule which corresponds with our Order 52 rule 1(d). That rule expressly refers to money "*in the hands* of executors or administrators or trustees", which Order 47 r. 4 (under which the present application was made) does not. But O. 47 r. 4 is expressed to be designed for the "detention" or "preservation" of any property. And where the property is money, it seems to me to be impossible to "detain" or "preserve" a sum of money unless it can be shewn that the defendant has the money at the time when the order is made.

Where the property is not money *Wilder v. Wilder and Charters*[4] shews that no order can be made under this rule unless the property can be shewn to be in the possession of the defendant. I can see no reason why there should be an exception where the property is money. It seems to me that unless it is insisted upon that, before an order is made under this rule, the money must be shewn to be actually in the defendant's hands, such orders may well become oppressive, having regard to the consequences which must ensue if the defendant fails to obey the order.

Those being the principles which I think should be applied in making an order under this rule there remains to be considered whether there is anything in this particular case which would justify an exception being made. The plaintiff claims to be entitled to a two-thirds share in the estate of her father who died intestate in 1924. Letters of administration were granted to the defendant, whose case is that the administration of the estate has been completed and that the plaintiff's share was handed over to herself and her husband according to the law and custom of the Chettiar Caste at the time of her marriage in 1927. Whether that was in fact done, and if it was done whether it was done in accordance with the law which was applicable, are among the issues to be determined. Fifteen years later (in 1942) an agreement was entered into between the defendant and the plaintiff's mother. It is stated in this Agreement that "properties of movable and immovable nature" were due to the defendant from the intestate's business, and under the terms of that Agreement the sum of Rs. 26,500 was paid to the defendant. The defendant admits that this money was the proceeds of sale of certain immovable property which was part of the estate. He received this money, but he denies that he has it now. Thus, although he alleges that in 1927 (on the occasion of the plaintiff's marriage) he paid her share to the plaintiff and her husband, we find that fifteen years later he is receiving a substantial sum of money, which is part of the proceeds of the estate, in pursuance of an Agreement to which the plaintiff was not a party. On the face of it it would appear to be in the interests of justice that the Order which is now appealed from should stand. But no application has been made for judgment to be entered under Order 25 rule 2 upon the ground that the defence is frivolous or vexatious; and I do not consider that we are entitled to judge from appearances upon an interlocutory application under this rule. Furthermore, the expressed purpose of this rule is the "detention" and "preservation" of the property. Unless the defendant has the money, it cannot be "detained" or "preserved." There is nothing to shew that the defendant has the money, and I cannot think that we should be justified in assuming that he has it. And to make use of this rule in order to require a defendant to pay money into Court, with no admission from him (or evidence of any kind) that he has the money, seems to me to extend the principle upon which a defendant is required to pay money into Court at this stage of an action beyond the limit which has hitherto been accepted.

I therefore think that this appeal should be allowed with costs.

Appeal Allowed.

REX v. TAN TEE.

[App. Crim. Juris. (Murray-Aynsley, C.J.) April 21, 1948]
[Singapore — Misc. Appl. No. 4 of 1948]

Criminal Procedure — Bail pending appeal from Magistrate's decision — Practice.

This was an application to High Court on behalf of the accused who was charged that he on or about 4/3/48 at 12.55 p.m. at No. 472 Victoria Street, did dishonestly retain stolen property, to wit, 3 pistons valued at $600/- the property of Gammons Malaya Ltd., knowing or having reason to believe the same to be stolen property, and thereby committed an offence punishable under s. 411 of the Penal Code. The accused was convicted by the 5th District Judge and sentenced to 12 months rigorous imprisonment. The learned District Judge refused bail pending the hearing of the appeal. The wife of the accused applied to the High Court for an order that the accused be admitted to bail pending the hearing and determination of his appeal.

Held, that it has always been the practice in this country for Magistrates to allow bail to a convicted person unless the Magistrate has very good reasons for not allowing it.

Case referred to :—

(1) *R. v. Greenberg,* 17 Cr. App. R. 106.

APPLICATION FOR BAIL.

Po Guan Hock for the Applicant.

L. Rayner for the Crown in opposing the application said that in English practice, the Court of Criminal Appeal never allowed bail unless in very special circumstances and referred to the case of R. v. **Greenberg**[1].

The Application was heard before **Murray-Aynsley, C. J.,** in Chambers who in giving oral judgment said that this was not an appeal to Court of Criminal Appeal but it was an appeal from the Police Court and that it has always been the practice in this country for Magistrates to allow bail to a convicted person unless the Magistrate has reasons for not allowing it. The usual reason for not allowing bail is the